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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 JEREMY NAYLOR,

Case No. 2:20-cv-00912-GMN-EJY

10 Petitioner, ORDER

11 v.

12 BRIAN WILLIAMS, SR, et al.,

13 Respondents.  
14

15 On January 6, 2022, this court granted respondents' motion to dismiss certain  
16 claims in Jeremy Naylor's pro se 28 U.S.C. § 2254 habeas corpus petition as  
17 unexhausted (ECF No. 25). Because the petition contained exhausted and unexhausted  
18 claims, the court directed Naylor to choose to either: submit a sworn declaration  
19 voluntarily abandoning the unexhausted claims in his federal habeas petition, and  
20 proceed only on the exhausted claims; return to state court to exhaust his unexhausted  
21 claims, in which case his federal habeas petition will be denied without prejudice; or file  
22 a motion asking this court to stay and abey his exhausted federal habeas claims while  
23 he returns to state court to exhaust his unexhausted claims.

24 In response, Naylor has filed a motion for stay and abeyance in order that he  
25 may return to state court to exhaust his unexhausted claims (ECF No. 26).  
26 Respondents filed an opposition (ECF No. 27). In *Rhines v. Weber*, 544 U.S. 269  
27 (2005), the Supreme Court placed limitations on the discretion of the court to facilitate  
28 habeas petitioners' return to state court to exhaust claims. The *Rhines* Court stated:

1 [S]tay and abeyance should be available only in limited  
 2 circumstances. Because granting a stay effectively excuses a petitioner's  
 3 failure to present his claims first to the state courts, stay and abeyance is  
 4 only appropriate when the district court determines there was good cause  
 5 for the petitioner's failure to exhaust his claims first in state court. Moreover,  
 6 even if a petitioner had good cause for that failure, the district court would  
 7 abuse its discretion if it were to grant him a stay when his unexhausted  
 claims are plainly meritless. *Cf.* 28 U.S.C. § 2254(b)(2) ("An application for  
 a writ of habeas corpus may be denied on the merits, notwithstanding the  
 failure of the applicant to exhaust the remedies available in the courts of the  
 State").

8 *Rhines*, 544 U.S. at 277.

9 The Court went on to state that, "[l]t likely would be an abuse of discretion for a  
 10 district court to deny a stay and to dismiss a mixed petition if the petitioner had good  
 11 cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and  
 12 there is no indication that the petitioner engaged in intentionally dilatory litigation  
 13 tactics." *Id.* at 278.

14 Thus, the court may stay a petition containing both exhausted and unexhausted  
 15 claims if: (1) the habeas petitioner has good cause; (2) the unexhausted claims are  
 16 potentially meritorious; and (3) petitioner has not engaged in dilatory litigation tactics.  
 17 *Rhines*, 544 U.S. at 277; *Gonzalez v. Wong*, 667 F.3d 965, 977–80 (9<sup>th</sup> Cir. 2011).  
 18 "[G]ood cause turns on whether the petitioner can set forth a reasonable excuse,  
 19 supported by sufficient evidence, to justify [the failure to exhaust a claim in state court]."  
 20 *Blake v. Baker*, 745 F.3d 977, 982 (9<sup>th</sup> Cir. 2014). "While a bald assertion cannot  
 21 amount to a showing of good cause, a reasonable excuse, supported by evidence to  
 22 justify a petitioner's failure to exhaust, will." *Id.* An indication that the standard is not  
 23 particularly stringent can be found in *Pace v. DiGuglielmo*, 544 U.S. 408 (2005), where  
 24 the Supreme Court stated that: "[a] petitioner's reasonable confusion about whether a  
 25 state filing would be timely will ordinarily constitute 'good cause' to excuse his failure to  
 26 exhaust." *Pace*, 544 U.S. at 416 (citing *Rhines*, 544 U.S. at 278). *See also Jackson v.*  
 27 *Roe*, 425 F.3d 654, 661-62 (9<sup>th</sup> Cir. 2005) (the application of an "extraordinary  
 28

1 circumstances” standard does not comport with the “good cause” standard prescribed  
2 by *Rhines*).

3 Here, Naylor briefly states that he is “confused” and was unaware that he had not  
4 exhausted some of his claims (ECF No. 26). But “[u]nspecific, unsupported excuses for  
5 failing to exhaust – such as unjustified ignorance,” do not satisfy the good cause  
6 requirement. *Blake v. Baker*, 745 F.3d 977, 981 (9<sup>th</sup> Cir. 2014) (interpreting the holding  
7 in *Wooten v. Kirkland*, 540 F.3d 1019, 1024 (9<sup>th</sup> Cir. 2008)). Naylor argues that he  
8 presented all of his claims in state court. The state-court record reflects that he did not  
9 raise all claims to the state appeals court on appeal of the denial of his state  
10 postconviction petition that he presented to the state district court. This may be in part  
11 the source of Naylor’s alleged confusion regarding which claims he exhausted. It also  
12 likely reflects his counsel’s tactical decisions regarding which claims were strong  
13 enough to raise on appeal. Naylor fails to address at all whether his claims may have  
14 any merit. While the court is not unsympathetic to the challenges of litigating while  
15 incarcerated, Naylor has presented no valid bases for a stay and abeyance. He has not  
16 demonstrated under *Rhines* that a stay should be granted. His motion, therefore, is  
17 denied.

18 As the court denies the stay, Naylor must now elect from two options:

- 19 1. He may submit a sworn declaration voluntarily abandoning  
20 the unexhausted claims in his federal habeas petition, and proceed only  
21 on the exhausted claims; or
- 22 2. He may return to state court to exhaust his unexhausted  
23 claims, in which case his federal habeas petition will be denied without  
24 prejudice.

25 Petitioner is advised to familiarize himself with the limitations periods for filing  
26 federal habeas petitions contained in 28 U.S.C. § 2244(d), as those limitations periods  
27 may have a direct and substantial effect on whatever choice he makes regarding his  
28 petition.

1           **IT IS THEREFORE ORDERED** that petitioner's motion for stay and abeyance  
2 (ECF No. 26) is **DENIED**.

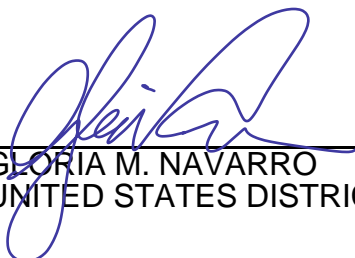
3           **IT IS FURTHER ORDERED** that petitioner has **30 days** to either: (1) inform this  
4 court in a sworn declaration that he wishes to formally and forever abandon the  
5 unexhausted grounds for relief in his federal habeas petition and proceed on the  
6 exhausted grounds; OR (2) inform this court in a sworn declaration that he wishes to  
7 dismiss this petition without prejudice in order to return to state court to exhaust his  
8 unexhausted claims.

9           **IT IS FURTHER ORDERED** that if petitioner elects to abandon his unexhausted  
10 grounds, respondents have **30 days** from the date petitioner serves his declaration of  
11 abandonment in which to file an answer to petitioner's remaining grounds for relief. The  
12 answer should contain all substantive and procedural arguments as to all surviving  
13 grounds of the petition and comply with Rule 5 of the Rules Governing Proceedings in  
14 the United States District Courts under 28 U.S.C. §2254.

15           **IT IS FURTHER ORDERED** that petitioner has **30 days** following service of  
16 respondents' answer in which to file a reply.

17           **IT IS FURTHER ORDERED** that if petitioner fails to respond to this order within  
18 the time permitted, this case may be dismissed.

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20           DATED: 24 June 2022.

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24           GLORIA M. NAVARRO  
25           UNITED STATES DISTRICT JUDGE  
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